

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number

Q88299

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)]
on _____

Application Number
10/537,699

Filed
June 6, 2005

Confirmation Number: 8563
First Named Inventor
Daisuke OGURA

Signature
Typed or
printed name

Art Unit
2618

Examiner
Philip Sobutka

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a Notice of Appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided.

- ☒ The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

CORRESPONDENCE ADDRESS

Direct all correspondence to the address for SUGHRUE MION, PLLC filed under the Customer Number listed below:

WASHINGTON OFFICE

23373

CUSTOMER NUMBER

I am the

- ☐ applicant/inventor.

/ Laura Moskowitz/

Signature

- ☐ assignee of record of the entire interest. See 37 CFR 3.71.
☐ Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)

Laura Moskowitz

Typed or printed name

- ☒ attorney or agent of record.
Registration number 55,470

(202) 293-7060

Telephone number

- ☐ attorney or agent acting under 37 CFR 1.34.
Registration number if acting under 37 CFR 1.34 _____

October 22, 2010

Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.

- ☒ *Total of 1 form is submitted.

PATENT APPLICATION

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of

Docket No: Q88299

Daisuke OGURA

Appln. No.: 10/537,699

Group Art Unit: 2618

Confirmation No.: 8563

Examiner: Philip Sobutka

Filed: June 6, 2005

For: RADIO ACCESS NETWORK CONTROL METHOD AND RADIO ACCESS
NETWORK

PRE-APPEAL BRIEF REQUEST FOR REVIEW

MAIL STOP AF - PATENTS

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

Sir:

Pursuant to the Pre-Appeal Brief Conference Pilot Program, and further to the Examiner's Final Office Action dated June 25, 2010, Applicant files this Pre-Appeal Brief Request for Review. This Request is also accompanied by the filing of a Notice of Appeal. Applicant turns now to the rejections at issue:

Current Rejections. As of the final Office Action of June 25, 2010, claims 1, 2, 4-8, 11-13, 15-20, and 23-26 are pending. Claims 1, 2, 5, 6, 8, 11-13, 16, 17, 19, 20, and 23-26 are rejected under 35 U.S.C. § 102(e) as allegedly anticipated by Sayers (U.S. Patent 6,539,237). Claims 4, 7, 15, and 18 are rejected under 35 U.S.C. § 103(a) as allegedly unpatentable over Sayers.

Applicant submits that Sayers fails to teach or suggest each of the features as recited in independent claims 1, 11, 12, and 23, and that claims 2, 4-8, 13, 15-20, and 24-26 are patentable at least by virtue of their dependencies.

Independent claim 1 recites: “A method of controlling a radio network controller of a radio access network, wherein the radio network controller comprises a plurality of control plane controllers and a plurality of user plane controllers, the method comprising: ... effecting transfer of status information between a user plane controller and a control plane controller other than the control plane controller to which the user plane controller is logically subordinate notwithstanding that the user plane controller is logically subordinate to another of said control plane controllers.” Independent claims 11, 12 and 23 recite analogous features.

In other words, a radio access network includes a radio network controller which comprises control plane controllers and user plane controllers. A user plane controller is logically subordinate to only one of the control plane controllers. However, the method comprises effecting a transfer of information between a user plane controller and a control plane controller *other than* the control plane controller to which the user plane controller is subordinate.

As clearly described in the specification (*see e.g.* page 2, lines 5-9), and as would have been understood by one of skill in the art¹, a control plane (C-plane) controller is a physical integration of a function of controlling a C-plane which is a protocol for transferring control signals; and a user plane (U-plane) controller is a physical integration of a function of controlling a U-plane which is a protocol for transferring user data related to user equipment.

¹ E.g. *Newton's Telecom Dictionary*, 19th edition, Harry Newton, CMP Books, San Francisco, CA, ©2003, defines a C Plane as : “The control plane within the ISDN protocol architecture; these protocols provide the transfer of information for the control of user connections and the allocation/deallocation of network resources”. *Newton's* defines a U Plane as: “The user plane within the ISDN protocol architecture; these protocols are for the transfer of information between user applications, such as digitized voice, video and data”.

Sayers is generally directed to a GSM system in which a Base Station Subsystem (BSS) 5 is composed of at least one Base Station Controller (BSC) 16, and a number of Base Transceiver Stations (BTSs) 12 (Figure 1, col. 3, lines 12-21).

As shown in Figure 1 of Sayers, a communication system includes a Network Subsystem NSS 6 including a mobile services switching center MSC 17. A Base Station Subsystem BSS 5 is connected to the NSS and includes at least one Base Station Controller BSC 16 and a number of Base Transceiver Stations BTSs 12, which are in radio communication with mobile stations 4.

NSS 6 and MSC 17. The NSS includes the MSC 17 which “provides the functions required to switch calls to/from the mobile stations 4 and the fixed public networks 8 (including PSTN and ISDN)” (Sayers, col. 9, lines 11-15). Thus, the NSS of the GSM system of Sayers may be comparable to the Core Network (CN) of a UTRAN system as described in the present specification (*see e.g.* specification, page 1, Figure 1).

BSS 5, BSC 16, and BTSs 12. The BSS 5 includes a controller BSC 16 and stations BTSs 12 and is connected to the NSS (Sayers, col. 8, lines 37-44). BTSs 12 define radio cell boundaries and handle radio interfaces with the mobile stations (col. 8, lines 40-44). The BSC 16 manages the radio resources of one or more BTSs and “controls the radio network, including allocation of radio time slots to mobile stations 4, release of resources, interpretation of measurement results and control of radio interface handovers” (col. 9, lines 4-10)

Regarding the claimed control plane controller and user plane controller, the Examiner alleges that these features are taught by the NSS and the BSS, respectively, of Sayers.

Applicant respectfully submits that the Examiner is mistaken. The NSS and BSS of Sayers may be considered to be comparable to the CN and the RAN described in the present

specification, respectively. The NSS is *not* comprised in a radio network controller of a radio access network, and *does not* control any C-plane or control signals. The BSS is *not* comprised in a radio network controller of a radio access network. Indeed, the BSS *is* a radio access network. And, the BSS *does not control* user data related to user equipment. For a detailed discussion of the NSS, BSS, and other features of Sayers, Applicant refers to pages 9-10 of the Amendment under 37 C.F.R. § 1.111, filed April 6, 2010.

Therefore, Applicant submits that the NSS does not teach or suggest the claimed control plane controller and the BSS does not teach or suggest the claimed user plane controller. Further, Applicant submits that as Sayers is directed to a GSM (Global System for Mobile Communications) system, no portion of Sayers teaches or suggests the claimed limitations relating to the claimed control plane controller and user plane controller.

At page 13 of the final Office Action, the Examiner alleges that these arguments are not commensurate with the scope of the claims. In response, Applicant submits that, as evidenced by the plain language of claim 1, provided above, claim 1 indeed specifically recites that the radio network controller is “of a radio access network”, that the radio network controller “comprises a plurality of control plane controllers and a plurality of user plane controllers”, and “effecting transfer of status information between a user plane controller and a control plane controller other than the control plane controller to which the user plane controller is logically subordinate notwithstanding that the user plane controller is logically subordinate to another of said control plane controllers.” Additionally, Applicant submits, as noted above, that the terms control plane controller and user plane controller are both known to those of skill in the art and clearly described in the specification.

Additionally, Applicant submits that the claims clearly comply with MPEP § 2173.05 which requires that “the meaning of every term used in a claim should be apparent from the prior art or from the specification and drawings at the time the application is filed.” Further, Applicant submits that MPEP §2173.05 further specifies that: “[d]uring patent examination, the pending claims must be given the broadest reasonable interpretation *consistent with the specification*”; and “[w]hen the specification states the meaning that a term in the claim is intended to have, *the claim is examined using that meaning*, in order to achieve a complete exploration of the applicant’s invention and its relation to the prior art.”

Thus, Applicant submits that claim 1 is patentable over Sayers and that claims 11, 12, and 23 recite features similar to those discussed above with respect to claim 1 and are therefore patentable for analogous reasons. Claims 2, 4-8, 13, 15-20, and 24-26 are patentable at least by virtue of their dependencies.

Conclusion. Accordingly, for at least these reasons, and the arguments previously submitted in the Amendments of November 10, 2008, July 29, 2009, Applicant respectfully submits that the rejection is improper and requests reconsideration and reversal.

Respectfully submitted,

/ Laura Moskowitz/

SUGHRUE MION, PLLC
Telephone: (202) 293-7060
Facsimile: (202) 293-7860

WASHINGTON OFFICE

23373

CUSTOMER NUMBER

Laura Moskowitz
Registration No. 55,470

Date: October 22, 2010